

Amendments to House Bill No. 41
Third Reading Copy

For the Senate Natural Resources Committee

Prepared by Joe Kolman
March 9, 2009 (9:54am)

1. Title, line 6.
Strike: "AND"

2. Title, line 7.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
APPLICABILITY DATE"

3. Page 3, line 24.
Following: "shall"
Strike: "obtain"
Insert: "apply for"

4. Page 6.
Following: line 1
Insert: "COORDINATION SECTION. Section 4. Coordination
instruction. If both Senate Bill No. 94 and [this act] are passed
and approved, then the amendments to 85-2-362 in both Senate Bill
No. 94 and [this act] are void and 85-2-362 must read as follows:
"85-2-362. **Aquifer recharge or mitigation plans in closed**
basins -- minimum requirements. (1) An applicant whose
hydrogeologic assessment conducted pursuant to 85-2-361 predicts
that there will be a net depletion of surface water shall offset
the net depletion that results in the adverse effect through a
mitigation plan or an aquifer recharge plan. A mitigation plan or
an aquifer recharge plan, or both, must provide evidence of how
the plan will offset the net depletion of surface water from an
appropriation of water that results in an adverse effect,
including, at a minimum, evidence:
~~(2) A mitigation plan must include:~~
~~(a) where and how the water in the plan will be put to~~
~~beneficial use;~~
~~(b) when and where, generally, water reallocated through~~
~~exchange or substitution will be required;~~
~~(c) the amount of water reallocated through exchange or~~
~~substitution that is required;~~
~~(d) how the proposed project or beneficial use for which~~
~~the mitigation plan is required will be operated;~~
~~(e) evidence~~
(a) of the amount of water reallocated through exchange or
substitution;

(b) of the general timing and location of the water reallocated through exchange or substitution;

(c) that the mitigation water will be available;

(d) of how the mitigation water in the plan will be protected and how it will be measured or accounted for;

(e) that the appropriate water quality permits have been applied for pursuant to Title 75, chapter 5, as required by 75-5-410 and 85-2-364; and

(f) that an application for a change in appropriation right, if necessary, has been submitted;

~~(f) evidence of water availability; and~~

~~(g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator.~~

~~(3) An aquifer recharge plan must include:~~

~~(a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to 75-5-410 and 85-2-364;~~

~~(b) where and how the water in the plan will be put to beneficial use;~~

~~(c) when and where, generally, water reallocated through exchange or substitution will be required;~~

~~(d) the amount of water reallocated through exchange or substitution that is required;~~

~~(e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;~~

~~(f) evidence that an application for a change in appropriation right, if necessary, has been submitted;~~

(g)(2) In addition to the requirements in subsection (1), an aquifer recharge plan must also include a description of the process by which water will be reintroduced to the aquifer;

~~(h) evidence of water availability; and~~

~~(i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.~~

(3) A mitigation plan or aquifer recharge plan may not include the proposed elimination of vegetation for which there is not an associated water right.

(4) A mitigation plan or aquifer recharge plan may not include the use of tributary water collected from land surfaces that have been made impermeable, thereby increasing the runoff but not adding to the existing supply of tributary water. This subsection does not apply to actions that increase the efficiency of existing conveyance structures.

(4)(5) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

(5)(6) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface

water that results in an adverse effect on a prior appropriator must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised."

{ Internal References to 85-2-362:

75-5-410aHB41	75-5-410aHB41	85-2-102x	85-2-102x
85-2-360x	85-2-360 x	85-2-360 x	85-2-361x
85-2-368x*	85-2-369x	85-2-370x*	85-2-370*x }

Insert: "COORDINATION SECTION. **Section 5. Coordination instruction.** If both Senate Bill No. 94 and [this act] are passed and approved, then the amendments to 85-2-364 in both Senate Bill No. 94 and [this act] are void and 85-2-364 must read as follows:

"85-2-364. Department permit coordination -- requirements for aquifer recharge plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

(1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation and requires a discharge permit pursuant to Title 75, chapter 5, shall provide to the department with a copy of a relevant discharge permit if necessary evidence that an application for the discharge permit has been submitted to the department of environmental quality; and

(2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation until the discharge permit, if necessary, has been obtained and presented to the department."

{ Internal References to 85-2-364:

85-2-361 x	85-2-361 x	85-2-361x	85-2-361x
85-2-362x	85-2-368x	85-2-370x	85-2-370 x }

Insert: "NEW SECTION. **Section 6. {standard} Effective date.** [This act] is effective on passage and approval."

Insert: "NEW SECTION. **Section 7. Applicability.** [This act] applies to applications received by the department of natural resources and conservation on or after the [effective date of this act]."

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